

APPENDIX A

OPINIONS BELOW

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2712

STANELY J. CATERBONE,
Appellant

v.

LANCASTER COUNTY PRISON;
CHERYL STEEBERGER, WARDEN;
ALEXANDRIA MILLER, Counselor (Official Capacity);
JAMES JOLLRATH, Block Sergeant (Official Capacity);
PRIME CARE, INC

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. Action No. 5-19-cv-02052)
District Judge: Honorable Jeffrey L. Schmehl

SUR PETITION FOR REHEARING

Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, and PHIPPS, *Circuit Judges*.

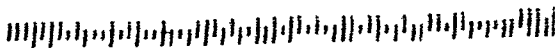
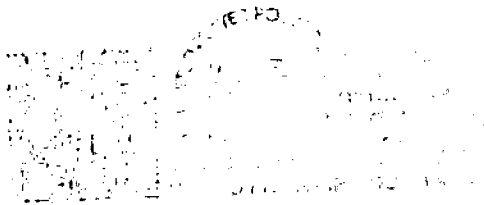
The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied.

BY THE COURT,

s/Joseph A. Greenaway, Jr.
Circuit Judge

Dated: July 27, 2020
Lmr/cc: Stanley J. Caterbone



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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-2712

Stanley Caterbone v. Lancaster County Prison, et al

(District Court/Agency No. 5-19-cv-02052)

ORDER

The Court has received petition for rehearing by **Stanley J. Caterbone**.

The petition for rehearing requirements are set forth in Fed. R. App. P. 32(g), 35(b), 40(b) and Third Circuit LAR 35.1 and 35.2. Your document does not comply with the following requirement(s):

Any additional documents attached to the petition must be accompanied by a motion to file the exhibits attached to the petition for rehearing. See Third Circuit L.A.R. 35.2(a).

Pursuant to 3rd Cir. LAR Misc. 107.3 and 3rd Cir. LAR Misc. 113, if the Court finds that a party continues not to be in compliance with the rules despite notice by the Clerk, the Court may, in its discretion, impose sanctions as it may deem appropriate, including but not limited to the dismissal of the appeal, imposition of costs or disciplinary sanctions upon a party or counsel.

The above deficiencies must be corrected by **05/28/2020**.

No action will be taken on the document until these deficiencies are corrected.

For the Court,

s/ Patricia S. Dodszuweit,
Clerk

Dated: May 14, 2020

cc:
Mr. Stanley J. Caterbone

PATRICIA S. DODSZUWEIT

CLERK



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April 30, 2020

Mr. Stanley J. Caterbone
1250 Fremont Street
Lancaster, PA 17603

RE: Stanley Caterbone v. Lancaster County Prison, et al
Case Number: 19-2712
District Court Case Number: 5-19-cv-02052

ENTRY OF JUDGMENT

Today, April 30, 2020 the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed. R. App. P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

For the Court.

s/ Patricia S. Dodszuweit,
Clerk

s/ pdb Case Manager

BLD-165

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2712

STANLEY J. CATERBONE,
Appellant

v.

LANCASTER COUNTY PRISON;
CHERYL STEEBERGER, WARDEN;
ALEXANDRIA MILLER, Counselor (Official Capacity);
JAMES JOLLRATH, Block Sergeant (Official Capacity);
PRIME CARE, INC

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 5-19-cv-02052)
District Judge: Honorable Jeffrey L. Schmehl

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(c)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
April 16, 2020
Before: AMBRO, GREENAWAY, Jr., and BIBAS, Circuit Judges

(Opinion filed: April 30, 2020)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Stanley Caterbone appeals the District Court's order dismissing his amended complaint for failure to state a claim. For the reasons below, we will summarily affirm the District Court's order.

In May 2019, Caterbone filed a motion for a preliminary injunction against Lancaster County Prison and its warden. He complained that while incarcerated in the prison he was not given writing supplies and copy services for his legal work. He demanded immediate copy service, medical treatment, and a criminal investigation. The District Court dismissed the pleading but gave Caterbone time to file an amended complaint. In its detailed order, the District Court gave Caterbone explicit instructions on how to provide sufficient information for his claims.

Caterbone filed an amended complaint, naming the warden, a counselor, a block sergeant, and the medical provider as defendants. The District Court dismissed the amended complaint before service pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) for failure to state a claim. Caterbone filed a timely notice of appeal, and we have jurisdiction under 28 U.S.C. § 1291.

Deliberate indifference to serious medical needs

In his amended complaint, Caterbone alleged that while incarcerated he needed medical treatment for chronic pain. He asserted that he was denied a cane and anti-inflammatory medication previously prescribed by his doctor and was instead given small doses of naproxen twice a day. In order to state a claim under the Eighth Amendment for denial of medical care, Caterbone needed to allege that the defendants were deliberately

indifferent to his serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A medical need is serious if it is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." Monmouth Cty Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987). We will assume arguendo that Caterbone's chronic pain is a serious medical need. Thus, we address whether Caterbone has alleged facts that could establish that the defendants were deliberately indifferent to that serious medical need.

Caterbone asserted in his amended complaint that Warden Steeberger was responsible for providing medical treatment at the prison. However, prison officials cannot be held to be deliberately indifferent merely because they did not respond to the medical complaints of a prisoner who was already being treated by the prison medical staff. Durmer v. O'Carroll, 991 F.2d 64, 69 (3d Cir. 1993). "[A]bsent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner, a non-medical prison official [] will not be chargeable with the Eighth Amendment scienter requirement of deliberate indifference." Spruill v. Gillis, 372 F.3d 218, 236 (3d Cir. 2004). Caterbone had not alleged any facts suggesting that Warden Steeburger or the other prison official defendants had any reason to believe that Caterbone was not being appropriately cared for by the medical staff. Thus, we will examine the allegations of deliberate indifference with respect to the remaining defendant, Primecare, the prison medical provider. Primecare cannot be held responsible for the acts of its employees. See Natale v. Camden County Corr. Facility, 318 F.3d 575,

583 (3d Cir. 2003). Rather, Caterbone must show that Primecare had a policy or custom that caused the alleged deliberate indifference. Id. at 583-84.

As noted above, Caterbone alleges that he was given naproxen instead of more powerful anti-inflammatories. While he alleged that Primecare's medical staff took him on and off his pain medication, he has alleged no facts to support his conclusion that he was taken off the medication to cause pain and suffering and not as an exercise of medical judgment. Nor has he alleged any policy or custom by Primecare that led to his being taken off of his medication. Moreover, mere disagreement as to the proper medical treatment will not support a claim under the Eighth Amendment. Spruill, 372 F.3d at 235. Courts will "disavow any attempt to second-guess the propriety or adequacy of a particular course of treatment . . . (which) remains a question of sound professional judgment." Inmates of Allegheny Jail v. Pierce, 612 F. 2d 754, 762 (3d Cir. 1979) (citations omitted). We agree with the District Court that Caterbone has not stated a claim for deliberate indifference to any serious medical need.

Denial of access to the courts

Caterbone alleged that he was provided the materials and services needed for his pending legal cases only sporadically. In order to state a claim of the denial of access to the courts, a prisoner such as Caterbone must allege that his efforts to pursue a legal claim were hindered and he suffered an actual injury. Lewis v. Casey, 518 U.S. 343, 351 (1996). In dismissing his original complaint for failure to state a claim, the District Court advised Caterbone of this requirement.

In his amended complaint, Caterbone appeared to allege that, in May 2019, he twice appealed a state court's order deferring his sentencing on a probation violation until after his pending criminal charges were resolved. Caterbone alleged that the appeals were purposefully mishandled by prison officials to keep him falsely imprisoned and, as a result, the state court denied his request for relief on June 13, 2019. He claimed that prison employees could not confirm that the appeals were mailed and that the docket shows that the appeals were not recorded. However, the electronic state court docket indicates that several filings were received from Caterbone in May 2019, including a petition for transcripts, a petition for house arrest, a motion for reconsideration, and three filings labeled "case correspondence." Even if his filings were not received and docketed as he believed they should be, Caterbone has not alleged any facts supporting a claim that any mishandling of the mail by prison officials caused the lack of receipt as opposed to mistakes by the postal service or the state court's clerk's office. Moreover, even if he had alleged facts showing fault by prison officials, he did not plausibly allege an actual injury as discussed below.

Caterbone needed to allege an actual injury, i.e., that he was hindered in his efforts to litigate a nonfrivolous or arguable claim. Monroe v. Beard, 536 F.3d 198, 205 (3d Cir. 2008). Prisoners may proceed on access-to-court claims only for challenges to their sentences or conditions of confinement, see id. at 205, and Caterbone has failed to allege an actual injury with respect to any such legal challenge. Caterbone asserted that the mishandling of his appeals of the order deferring sentence on his probation violation

BLD-165

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April 16, 2020
Before: AMBRO, GREENAWAY, Jr., and BIBAS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District
Court for the Eastern District of Pennsylvania and was submitted for possible dismissal
pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third

Circuit LAR 27.4 and I.O.P. 10.6 on April 16, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered July 2, 2019, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

g/ Patricia S. Dodszeuweit
Clerk

DATED: April 30, 2020

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